

whole would I think be caught under the very wide definition of subversion given at section 29 of the Act, but in my view it does not necessarily follow that because the contents of a document comes within the definition of subversion it must be such as to be likely to lead to a breach of the peace. The court must consider whether the document was of such a nature as to render it probable that its contents would lead to a breach of the peace.

To decide whether this is so a court must examine carefully the document, and I think have regard to all the surrounding circumstances, including its position, prominent or otherwise, the size of the writing and any other relevant matter.

This document is clearly written in a hostile spirit to the Malaysian and British Governments, but I would not venture to say that its language is inflammatory, or provocative to the public at large. In fact on the face of it it is anti-Malaysian propaganda. It could not I think be said to be of a nature which would be likely to cause a firing of passion as would propaganda advocating colour or racial segregation obviously do.

In my view having very carefully and anxiously considered this document and its contents I do not find that it is of a nature which is likely to lead to a breach of the peace. In my view it would have been open to the police to charge the 2nd accused with possession of a subversive document. In all the circumstances I find then, that the document is not caught by the provisions of section 27 Internal Security Act, and in the result hold that the accused have no case to answer on this charge. I order that the accused be acquitted and discharged."

The argument of the Public Prosecutor in the present appeal is to this effect: "The learned magistrate considered the document to be 'subversive', and publication of a subversive document is clearly likely to lead to a breach of the peace." A document, however, by definition (section 29(3) of the Internal Security Act 1960) might be "subversive" even though not *likely* to cause a breach of the peace. It will be subversive if it has "a tendency . . . to propagate . . . any act prejudicial to the security of the Federation." The emphasis, as the learned magistrate properly recognised, is on the word "tendency". A document may well "tend" towards an act without being "likely" to cause it. Therefore the learned magistrate was perfectly correct to discriminate between sections 27 and 29 of the Act. In any event, it is not germane to the present issue to decide whether or not the document in the instant case was "subversive" in terms of section 29.

There are three further observations which this court desires to add:

(1) The finding that an act is or is not likely to cause a breach of the peace is fundamentally a question of fact, and the finding of fact may not lightly be disturbed on appeal. No act on the part of any person was proved to show that it was reasonably probable that the conduct of the accused would on the day in question have provoked a breach of the peace. As for "What is a Breach of the Peace" see the paragraph under that heading in 1954 *Criminal Law Review* p. 578. It may be relevant to note that conduct proved to cause annoyance to the public is not

A necessarily conduct which is likely to occasion a breach of the peace (*Bryan v. Robinson* ⁽¹⁾).

(2) The question whether a document is "likely to cause a breach of the peace" must be considered within the context of section 27 read as a whole. The section reads as follows:—

B "Any person who posts or distributes any placard, circular or other document containing any incitement to violence, or counselling disobedience to the law or to any lawful order, or likely to lead to any breach of the peace, shall be guilty of an offence against this part."

I have no doubt that the learned magistrate is well acquainted with the "*ejusdem generis*" rule. "By this it is meant that general words coming after particular words are restricted to and controlled by the meaning of the particular words. The simplest statement of this doctrine is to be found in a judgment of Lord Campbell C.J. in *Reg. v. Edmundson* (1859) 28 L.J. (M.C.) 213, where he says: 'I accede to the principle laid down in all the cases which have been cited, that, where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified.'" (*Attorney-General v. Brown* ⁽²⁾).

If it had been desired absolutely to prohibit publication of all documents "likely to lead to any breach of the peace", it would have been redundant to specify "incitements to violence etc." The particular documents specified in the first two-thirds of section 27 have a restricting influence on the generic words which follow. The authorities on the *ejusdem generis* doctrine are collected in *Maxwell on Interpretation of Statutes*, under the heading: "Generic words following more Specific".

(3) Finally it must be remembered that section 27 is a penal section and should be construed strictly.

For the foregoing reasons I am satisfied that the learned magistrate's recording of an order of acquittal cannot be disturbed. Therefore this appeal against acquittal is dismissed.

Appeal dismissed.

ABDUL KAREEM v. RAWTHER

[O.C.J. (Ong J.) March 12, 1965]

[K.L. — Civil Suit No. 520 of 1960]

Malicious Prosecution — Malicious allegation of serious criminal offence — Arrest and detention by police — Subsequent acquittal and discharge — Defendant electing not to appear — Damages.

Practice and Procedure — R.S.C. 1957 O. 7 rr. 2 & 3 and O. 36 r. 31.

The plaintiff was arrested and prosecuted on a charge under section 199 of the Penal Code, but was subsequently discharged without his defence being called. He alleged that he was arrested at the instance of, and prosecuted on the strength of information supplied by,

the defendant. His evidence was corroborated by the inspector who arrested him. On an action for damages for malicious prosecution, the defendant elected not to appear nor was he represented by counsel.

Held: (1) as the prosecution was the direct result of the malicious allegations made by the defendant and as no reasonable or probable cause could be discovered the plaintiff was entitled to succeed in this action;

(2) as the plaintiff had suffered damage in incurring heavy expense to defend himself, and had suffered grave injury to his reputation and considerable mental anguish and suspense, he was entitled to damages for out-of-pocket expenses and general damages. General damages assessed at \$10,000.

CIVIL SUIT.

Richard Tallala for the plaintiff.

Defendant absent and unrepresented.

Ong J.: This is an action for damages for malicious prosecution. The plaintiff was arrested by inspector Aeria at about 2.30 p.m. on April 11, 1960 in the premises of Ismail Ghaney Rawther & Co. Ltd., Kuala Lumpur, before a number of customers and employees of trading company. He was taken to the High Street police station and detained there for about four hours until his release on bail. On June 24, 1960 and subsequent dates he was tried in the sessions court, Kuala Lumpur, for the offence of knowingly making a false statement in a statutory declaration, claiming ownership of 300 shares in Ismail Ghaney Rawther & Co. Ltd., an offence punishable under section 199 of the Penal Code. On November 7, 1960 he was acquitted and discharged without the defence being called. This action is the sequel.

The plaintiff alleged that he was arrested at the instance of the defendant and prosecuted on the strength of information supplied by the defendant. His evidence was corroborated by inspector Aeria who testified that the facts set out in paragraph 5 of his report (Ex.P5) were given to him personally by the defendant. In the paragraph referred to it was stated as follows:

"The elder brother K. E. Packeer Mohideen Rawther claims that the share certificate is a forgery and that it was made out without his approval. He further claims that his younger brother had inserted entries in the account books to support the claim of S. M. Abdul Karim in respect of the 300 shares worth \$30,000 and had cut out his signature from other documents typed over them the necessary words to indicate that he (Packeer Mohideen) had authorised these entries."

The defence, to put it briefly, traversed every allegation of fact in the statement of claim open to traverse and, in particular, contended that the prosecution was not initiated or carried on by him (or by his solicitors on his instructions) but that, on the contrary, the charge was brought and the prosecution carried on by the Public Prosecutor, and that the defendant merely gave evidence upon being summoned to do so and his evidence was in all respects true.

A At the trial, however, the defendant elected not to appear, nor was he represented by counsel. The court accordingly proceeded in accordance with R.S.C. Order 36, rule 31. I have deliberately used the word "elected" for the reasons which I now set out. At the outset the defendant was represented by a firm of solicitors, B Messrs. Bannon & Bailey, whose address was the defendant's address for service. That firm was dissolved in 1963 and the partners thereof ceased to practice under the firm name. The defendant had not given any notice of change of solicitors under Order 7, rule 2. The plaintiff's solicitor accordingly applied to court under rule 3 for an order declaring that Messrs. Bannon & Bailey had ceased to be solicitors acting for the defendant herein. Notice of the application had been sent by registered post to the defendant in India, but the registered cover was returned with the indorsement "Refused". An order in terms was made by Gill J. on May 5, 1964 and pursuant to rule 3(2) a certified copy thereof was sent to the defendant by registered post, but was again refused: (see Ex.P1 & P2, the unopened letters of which the defendant refused to accept delivery, and Ex.P1A & P2A, being copies of the letters in Ex.P1 & P2). Pursuant again to the same rule 3(2), the plaintiff's solicitor on June 3, 1964 filed his certificate in court that the said order of May 5, 1964 was duly served on the defendant — though, as it subsequently turned out, service was again refused by the defendant. Finally, notice of trial was set on August 18, 1964 by the Senior Assistant Registrar of this court addressed to the defendant in India by registered post and the same was returned to sender, refused. The sender's name clearly appeared in the registered cover as "Senior Assistant Registrar, High Court, Malaya, Kuala Lumpur". Thus it is clear beyond peradventure that, whatever he might have alleged to the contrary in his defence, the defendant had chosen not to dispute the claim.

The evidence of the plaintiff and his witnesses in my view, clearly entitles him to succeed in this action. The defendant had deliberately made allegations of a criminal offence or offences of a serious character against the plaintiff to inspector Aeria, whose duty it was to act upon such information. The prosecution was a direct result of such allegations. It had terminated in the plaintiff's acquittal. There undoubtedly was malice, as there had been ill-will for some considerable time between the parties; and I cannot, without any assistance from the defendant himself, discover any reasonable or probable cause. The plaintiff had suffered damage in incurring heavy expense to defend himself, and he had suffered grave injury to his reputation. It goes without saying that any person faced with a charge of a criminal offence, the penalty for which is imprisonment,

must suffer considerable mental anguish and suspense from the time of his arrest until the final determination of the case against him. A

As to damages, for out-of-pocket expenses incurred in obtaining legal assistance for the 11-day trial, the plaintiff had paid Dato Raja-sooria \$2,000 and remains liable to pay him \$2,200 by way of refreshers. I would assess the general damages at \$10,000. I accordingly give judgment for the plaintiff for \$14,200 and costs to be taxed.

Judgment for the plaintiff.

Solicitors: *Richard Talalla & Co.*

MALAYAN CREDIT LTD. v. MOHAMED KASSIM

[O.C.J. (Hepworth J.) March 12, 1965]

[Penang — Civil Suit No. 44 of 1964]

Hire purchase — Hire purchase agreement — Whether bill of sale — Whether moneylending transaction — Claim for damages — Whether sum claimed penalty or liquidated.

Contract — "Contract of sale" and "sale" — Distinction between — Default.

The defendant arranged to purchase a motor car from Universal Cars Ltd. It was agreed that the motor car should be sold by Universal Cars Ltd. to the plaintiffs, a hire purchase finance company, on the understanding that they would enter into a hire purchase agreement with the defendant. This was done but before the first instalment was due the motor car met with an accident as a result of which the car was badly damaged and the defendant seriously injured. As a result the defendant failed to pay the instalments and the plaintiffs brought an action claiming \$4,250 being the amount due on the said motor car under the hire purchase agreement or the return of the said motor car. It was argued on behalf of the defendant that the agreement was a bill of sale and the transaction was a moneylending transaction or alternatively if it was a *bona fide* hire purchase agreement then the sum claimed was a penalty and therefore unenforceable.

Held: (1) although there was an agreement between Universal Cars Ltd. and the defendant for the sale of the car, the property in the car had not passed to the defendant, instead the defendant had agreed that the car be sold to the plaintiffs on the understanding that the plaintiffs would enter into a hire purchase agreement with the defendant. In these circumstances the agreement was not a bill of sale;

(2) on the authority of *Transport and General Credit Corporation Ltd. v. Morgan*⁽¹⁾ the transaction in the present case was not a moneylending transaction;

(3) as the contract did not stipulate that a named sum shall become payable on breach, the sum claimed was not a penalty.

Case referred to:—

(1) *Transport & General Credit Corporation Ltd. v. Morgan* [1939] 1 Ch. 531.

CIVIL SUIT.

Lee Saik Kee for the plaintiffs.

Lee Cheng Keat for the defendant.

Cur. Adv. Vult.

Hepworth J.: The plaintiffs are a hire purchase finance company carrying on business at 9, Union Street, Penang. The defendant at all material times was the secretary of the Malayan Police Co-operative Society, Penang.

B On the 28th August, 1963, the defendant entered into a hire purchase agreement with the plaintiffs (hereinafter referred to as the agreement) whereby the defendant agreed to hire a Ford Cortina motor-car PD 5436 from the plaintiffs and pay therefor 29 instalments of \$141.35 commencing on the 28th September, 1963 and one final instalment of \$150.85. After payment of all the instalments due the defendant was to be entitled to purchase the said motor-car for the sum of \$10.

C The defendant took delivery of the said motor-car on the 28th August, 1963, and while driving the said motor-car on the 26th September, 1963, met with a serious accident as a result of which the said motor-car was badly damaged and the defendant suffered severe injuries. As a result no instalments have ever been paid under the agreement.

E The said motor-car was ultimately repaired at a cost of \$2,100, which sum was paid by the plaintiffs, and is now in a garage in Penang.

The plaintiffs claim \$4,250 being the amount due on the said motor-car under the agreement or the return of the said motor-car.

The defendant pleads that:—

F (a) the agreement is a bill of sale within the meaning of the Bills of Sale Ordinance, 1950, and that as it has not been drawn up, executed or registered in accordance with the provisions of that Ordinance it is void and unenforceable, and

G (b) the transaction was a moneylending transaction that the plaintiffs are not licensed moneylenders, and that the transaction is void for non-compliance with the provisions of the Moneylenders Ordinance, 1951, and therefore unenforceable, or alternatively

(c) if the transaction between himself and the plaintiffs is a *bona fide* hire purchase transaction, then the sum claimed is a penalty and therefore unrecoverable.

H The defendant counterclaims for a declaration (1) that at all material times he was the sole owner of the said motor-car and still is, and (2) that the agreement is a bill of sale within the meaning of the Bills of Sale Ordinance, 1950.

Briefly the defendant's ground for pleas (a) and (b) is that he purchased the said motor-car from Messrs. Universal Cars Ltd., Penang, on the 27th August, 1963, and that the said motor-car was not, as the plaintiffs allege, sold by Messrs. Universal Cars Ltd., to the plaintiffs on the 28th August, 1963.

I I do not propose to go into the facts in detail but to state my view of the facts as disclosed in the evidence. On the 27th August, 1963, the defendant went to Universal Cars Ltd., with one